CalPERS

Legal Office
P.O. Box 2749
Sacramento, CA 95812-2749
Telecommunications Device for the Deaf - (916) 795-3240
(916) 795-3675

April 23, 2008

AGENDA ITEM 16c

TO: BOARD OF ADMINISTRATION

I.	**SUBJECT:**	Proposed Decision Processes
II.	**PROGRAM:**	Legal Office
III.	**RECOMMENDATION:**	Information Item
IV.	**ANALYSIS:**	

At the March 19, 2008 Board meeting, several Board members asked questions about the process of scheduling Proposed Decisions and the distribution of written argument. The purpose of this item is to give a brief explanation of these procedures.

A.   Distribution of Respondent's Argument

Initially, there were concerns that the Respondent's Argument in the Cameron L. Eckles matter was first provided to the Board during the morning of the March Board meeting. This concern is unfounded.

Approximately two weeks before the Board meeting, counsel for Eckles called the Legal Office seeking permission to file Respondent's Argument a day or two after the deadline. Counsel was given permission to file the document late and was given instructions to send the document to the Board Secretary. On March 11, the date of the first mailing of agenda items, the Respondent's Argument had not yet been received. The Legal Office informed the Board Services Unit, which handles these items, that the document had not been received and left telephone messages with Eckles counsel. These messages were not returned. The first mailing went out without Respondent's Argument as scheduled.

The Legal Office then conducted a search for the document and the next day located it in the electronic "workflow." The document was forwarded to the Board Services Unit and *it was included in the second mailing to the Board on March 12*. Thus, the document was provided to all Board members well in advance of the meeting on March 19.

B.   Scheduling of Proposed Decision Items

The Legal Office maintains a schedule for processing Proposed Decisions once they are received from the Office of Administrative Hearings. This schedule includes a "cut-off" date for each month's agenda.[1] If a Proposed Decision is received after the cut-off date, it must be scheduled for the following month. The cut-off date is typically forty days before the date of the corresponding Board meeting. If the Proposed Decision is received after the "cut-off" date, then it goes on the following month's agenda. Typically, an item that is scheduled in this manner may be postponed for an additional month by the Board and still fall within the 100-day limit.[2] However, there was no specific control in place to ensure that it does. The Legal Office has therefore implemented a slight change in its procedures. Proposed Decisions that are received within two weeks after a "cut-off" date will now be reviewed by the Assistant Chief Counsel to ensure that the item is scheduled to allow sufficient time for a one-month delay in decision-making by the Board.

V.   STRATEGIC PLAN:

This item is not a specific product of the Strategic Plan, but is part of the Legal Office regular and ongoing workload.

VI.   RESULTS / COSTS:

There are no additional costs associated with this item.

_____
Peter H. Mixon
General Counsel

---

[1] A cut-off date is necessary to allow sufficient time to "process" the item. Among other things, notice must be given to the parties, arguments must be drafted by the Legal Office, and the item must be approved by CalPERS staff.

[2] Under the Administrative Procedures Act, the Board must take action on a proposed decision within 100 days of receipt of the decision. (Gov. Code, § 11517, subd. (c)(2).) The proposed decision in Eckles was received the day of the cut-off for the February meeting (January 11). Scheduling the decision for the following month's meeting would typically allow for a one month delay and thus would not be a problem. The deadline was April 21 and the Board meeting would normally have been scheduled for April 16. However, the April meeting date was delayed a week to accommodate the C.I.I. meeting and thus was outside the limit by two days.